to the fiction of relation. Although a beneficial interest vests in the legatee on the testator's death, he has a right to reject it.[14] When once he exercises this right his share falls back into the residuary, and the residuary legatees by relation take an interest in it from the death of the testator. The transfer, then, has been in effect directly to the residuary legatees and therefore if they are non-taxable the state has no right to collect a tax.

THE NATURE OF THE JURISDICTION OF UNITED STATES COURTS ESTABLISHED IN FOREIGN COUNTRIES — The extent to which treaties allow the United States to exercise extraterritorial jurisdiction is to enforce duties owed by its own citizens. Their rights are governed and administered by the law and the local courts, whether native or consular, of the person who wrongs them.[1] The nature of the jurisdiction so exercised must be determined by the terms of the treaty giving the power, and the act creating the tribunal. An interesting example of such an act is that of June 30, 1906, establishing the United States Court for China and giving it jurisdiction of the more important civil and criminal cases against American citizens in China, formerly heard before the American consular courts there.[2] The act greatly restricts the jurisdiction of the consuls and allows appeals from their judgments to the new court in all cases. The Circuit Court of Appeals for the Ninth Circuit has recently held that this court has jurisdiction of an offense committed by an American in China, where the act constituted a crime by the "common law," — meaning the common law of the colonies at the time of the separation from Great Britain. *Biddle* v. *United States*, 156 Fed. 759. Of course, this does not imply that the court is attempting to fasten the English common law on the Chinese Empire, but simply denotes that the United States has authority to apply this somewhat abstract system of law in the exercise of its extraterritorial privileges in China. The sanction of such extraterritorial jurisdiction is the consent of the Emperor of China, expressed in the treaties with the United States, to the effect that citizens of the United States sued or charged with crime in China shall be tried and punished "according to the laws of the United States."[3] And, in defining these laws for the exercise of the jurisdiction thus granted, Congress enacted in the Act of 1906 as well as in the previous acts which concerned the consular courts, that the "common law" shall be applied when existing laws are deficient to give jurisdiction.[4] The act rightly and clearly recognizes, however, that the jurisdiction of the United States is dependent on and limited by the terms of the treaties with China. The jurisdiction of the United States in China is binding simply because of the presence of American citizens in the territory of an emperor who, by force of his personal jurisdiction over them, has placed them under the jurisdiction of their sovereign. And clearly it is not the delegation of a qualified territorial jurisdiction, but the grant of personal jurisdiction,[5] as it does not extend to persons who are not American citizens.[6] But the consular courts and the Court for China will entertain suits by foreigners against American citizens in China,[5] and will bind and punish them without

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[14] Watson *v.* Watson, 128 Mass. 152; *In re* Estate of Stone, *supra*.

[1] Piggott, Exterritoriality, 21. [2] 34 Stat. at L. 814.

[3] Treaty with China, June 18, 1858, Art. XI, XXIV, XXVII. See Dainese *v.* Hall, 91 U. S. 13.

[4] 34 Stat. at L. 814, § 4.

[5] 7 Opin. Atty.-Gen. 495. [6] 11 Opin. Atty.-Gen. 474.

observing the Constitution of the United States.[7] As formal indictment and trial by jury would usually be impracticable, Congress has not adopted the constitutional guaranties for the benefit of defendants before extra-territorial courts.

The exercise of this peculiar personal jurisdiction by these courts is simply the most practical means of insuring justice to our citizens in countries — Oriental or barbarous — where standards differ so essentially from ours that just trials of foreigners are impossible.[8] When, however, a civilized nation annexes[9] or assumes the protection[10] of such countries, this objection disappears, and the United States abandons its extraterritorial jurisdiction. The same result is reached when an Oriental nation develops into a modern nation and establishes responsible courts, as in the case of Japan.[11] And, as between the United States and civilized nations, the jurisdiction of consular courts is confined to disputes arising between masters, officers, and crews of vessels belonging to the respective nations, when not breaches of the peace.[12]

THE NATURE OF THE INTEREST NECESSARY TO PERMIT AN OBJECTION TO THE CONSTITUTIONALITY OF A STATUTE. — Since the federal Constitution is the supreme law of the land, there is a general presumption that the governmental bodies have acted in conformity with it. A court will hesitate to declare a statute unconstitutional, since in doing so it necessarily decides that the legislature, either wilfully or negligently, has tried to usurp power denied to it by the people. Consequently, even when a constitutional point is squarely raised, if the court can decide the case on another ground, it will do so. In like manner a court will not listen to an objection to the constitutionality of an act, made by one whose rights are not directly affected by it. Thus the owner of the particular estate may not object to a statute which defeats the right of the remainderman.[1] Nor where a law excludes negroes from a grand jury may a white man object to such exclusion, since he is not prejudiced thereby.[2] And if one has consented to an invalid statute, as to the taking of property without compensation, he cannot later set up the unconstitutionality of the transaction.[3] A more difficult problem arises when one questions the constitutionality of a statute in an official capacity. The question generally arises when application is made for a writ of *mandamus* to compel an official to perform his duty. It would clearly be disastrous if every petty official could, when the attempt was made to compel him to perform an administrative act, set up the defense of the unconstitutionality of the statute.[4] On the other hand,

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[7] *In re* Ross, 140 U. S. 453.

[8] By treaties with the following countries, the United States has extraterritorial jurisdiction in civil or criminal cases or both: Borneo, China, Muscat, Morocco, Persia, Siam, Tripoli, and Turkey.

[9] Madagascar: For. Rel. 1897, 152–4.

[10] British Protectorate of Zanzibar: 5 Moore, Dig. Internat. Law, 868–9.

[11] 2 Moore, Dig. Internat. Law, 660. The United States has promised to relinquish its extraterritorial rights when the condition of Chinese law warrants it in so doing. Treaty with China, Oct. 8, 1903, Art. XV.

[12] 5 Moore, Dig. Internat. Law, 128. *Cf. In re* Wildenhus, 28 Fed. 924; Tellefsen *v.* Fee, 168 Mass. 188.

[1] Sinclair *v.* Jackson, 8 Cow. (N. Y.) 543.

[2] Com. *v.* Wright, 79 Ky. 22.

[3] Haskell *v.* New Bedford, 108 Mass. 208. See 21 HARV. L. REV. 133.

[4] See United States *v.* Marble, 3 Mackey (D. C.) 32.